

PRELIMINARY RESPONSE UNDER 37 C.F.R. § 1.111  
U.S. Appln. No. 09/399,696  
Atty. Docket No. A8010

section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

However, § 103(c) applies to applications filed on or after November 29, 1999, and Applicants' filing date is September 21, 1999. Consequently, Applicants file herewith a continued prosecution application (CPA) to satisfy the "on or after November 29, 1999" requirement of § 103(c). As noted in the MPEP:

the mere filing of a continuing application on or after November 29, 1999, with the required evidence of common ownership, will serve to exclude commonly owned 35 U.S.C. § 102(e) prior art that was applied, or could have been applied, in a rejection under 35 U.S.C. § 103 in the parent application.

*See* MPEP § 706.02(I)(1).

The present Application and U.S. Patent No. 6,263,342 issued to Change et al. were, at the time the invention of the Application was made, owned by International Business Machines Corporation.

Thus, U.S. Patent No. 6,263,342 is disqualified from being used in a rejection under 35 U.S.C. § 103(a) against the claims of the Application. *See, e.g.*, MPEP § 706.02(I)(2)(II). Accordingly, Applicants traverse the rejection of claims 1-18 based on a combination including this disqualified reference.

### **III. Formal Matter**

The Examiner indicated his approval of the proposed drawing correction filed on November 21, 2001. However, in their Amendment filed on November 16, 2001, Applicants incorrectly referred to their submission as a proposed drawing correction. Applicants actually

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filed a Submission of Corrected Formal Drawings (for Fig. 7) on November 16, 2001. This submission is believed to obviate the informalities indicated on Form PTO-948 attached to Paper No. 9. Therefore, Applicants respectfully request that the Examiner indicate his approval of the formal drawings.

#### **IV. Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly invited to contact the undersigned attorney at the telephone number listed below.

Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this case, and any required fee, except for the Issue Fee, for such extension is to be charged to Deposit Account No. 19-4880.

Respectfully submitted,



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